

REMARKS

Claims 1-34 are pending in the present application. In the Office Action, the Examiner objected to claims 14-15 and 31-32 because of a typographical error. Applicants have amended claims 14 and 31 to correct the typographical error. The claims have in no way been narrowed by virtue of these amendments and so these amendments should not be interpreted as narrowing the claimed invention for purposes of any determination under the doctrine of equivalents. Applicants request that the Examiner's objections to Claims 14-15 and 31-32 be withdrawn.

In the Office Action, claims 1-34 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 5, and 25 of co-pending U.S. Patent Application Serial No. 09/901,520. In the interest of expediency, Applicant has included herein a terminal disclaimer and respectfully requests that the Examiner's provisional rejection of claims 1-34 be withdrawn. However, it will be appreciated that the filing of the terminal disclaimer to obviate the Examiner's rejection is not an admission of the propriety of the rejection. *Quad Environmental Technologies Corp. vs. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed Cir. 1991). See, e.g., MPEP §804.03.

In the Office Action, claims 1-34 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 16 of co-pending U.S. Patent Application Serial No. 09/901,212. In the interest of expediency, Applicant has included herein a terminal disclaimer and respectfully requests that the Examiner's provisional rejection of claims 1-34 be withdrawn. However, it will be appreciated that the filing of the terminal disclaimer to obviate the Examiner's rejection is not an admission of the propriety of the rejection. *Quad Environmental Technologies Corp. vs. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed Cir. 1991). See, e.g., MPEP §804.03.

In the Office Action, claims 1-7, 10-14, 16-17, 20-26, 28-31, and 33-34 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Ganesan (U.S. Patent No. 5,978,481). Claims 8-9 and 27 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Ganesan in view of Fleming III, et al (U.S. Patent No. 6,212,360). Claims 15 and 32 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Ganesan in view of Weidner, et al (U.S. Patent No. 5,987,572). Claims 18-19 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Ganesan in view of Albrecht, et al (U.S. Patent No. 6,510,521). The Examiner's rejections are respectfully traversed.

Ganesan describes an AT mobidem 18 that may be controlled by a set of AT command instructions. The mobidem 18 includes a "terminate and stay resident" (TSR) program 301 that can detect connect messages from the AT mobidem 18. A redirector 402 in the TSR 301 may operate in a "no-encrypt" mode or an "encrypt" mode. When the redirector 402 is in the no-encrypt mode, the redirector 402 traps input/output operations, tracks each byte of data sent and/or received, and passes the data on unencrypted. If the redirector 402 detects a connect message issued by the AT mobidem 18, the redirector 402 enters encrypt mode and directs all data to a stream DES engine 404 that decrypts the data received from the AT mobidem 18 and encrypts data received from a communication application 300, before returning the data to the redirector 402. See Ganesan, col. 5, line 51-col. 6, line14 and Figure 5.

Ganesan, however, is not concerned with messages, such as the connect messages, that may be erroneously and/or maliciously transmitted. Accordingly, Ganesan is completely silent with regard to providing any independent confirmation that the mobidem 18 is operating in an expected and/or desirable manner. In particular, Ganesan does not describe or suggest a privileged mode of operation. As defined in the specification, a privileged mode of operation of a

computer is defined as a mode of operation not visible to other process executing on the computer. See Patent Application, page 10, line 14 – page 11, line 2. Ganesan also fails to teach or suggest independently extracting secure control codes from a digital received signal, determining an operational characteristic of the physical layer hardware unit, and signaling a security violation in response to the operational characteristic being inconsistent with the secure control codes, as set forth in independent claim 1, 22, and 34.

For at least the aforementioned reasons, Applicants respectfully submit the claims 1-7, 10-14, 16-17, 20-26, 28-31, and 33-34 are not anticipated by Ganesan and request that the Examiner's rejections of claims 1-7, 10-14, 16-17, 20-26, 28-31, and 33-34 under 35 U.S.C. 102(b) be withdrawn.

Moreover, it is respectfully submitted that the pending claims are not obvious in view of the prior art of record. To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). As discussed above, Ganesan fails to teach or suggest many aspects of the present invention. The Examiner also cites Fleming, Weidner, and Albrecht in rejecting various dependent claims. Fleming describes power control techniques for satellite transmissions, Weidner describes encrypting data transmitted between a microprocessor and a memory, and Albrecht describes authenticating data to be written to a protected non-volatile storage. However, none of the secondary references remedy the fundamental deficiencies of Ganesan. Thus, Applicants respectfully submit that the prior art of record fails to teach all of the limitations set forth in independent claims 1, 22, and 34.

The cited references also fail to provide any suggestion or motivation to modify the prior art record to arrive at Applicants' claimed invention. To the contrary, Ganesan teaches away

from the present invention. In particular, Ganesan teaches that all data received by the mobidem 18 is interpreted as commands and passed on unencrypted by the redirector 402 when the TSR 301 is in command mode and the redirector 402 is in the no-encrypt mode. When the TSR 301 is in data mode, and the redirector 402 is consequently in the encrypt mode, all data received by the redirector 402 is directed to the stream DES engine 404. See Ganesan, col. 5, line 51-col. 6, line 14 and Figure 5. Since Ganesan teaches that all of the data is either passed on unencrypted or directed to the stream DES engine 404 for encryption or decryption, all of the devices and/or processes described in Ganesan are visible in all the operational modes of the mobidem 18. Thus, Ganesan teaches away from a privileged mode of operation, which is defined in the specification as a mode of operation not visible to some processes executing on the computer. It is by now well established that teaching away by the prior art constitutes *prima facie* evidence that the claimed invention is not obvious. *See, inter alia, In re Fine*, 5 U.S.P.Q.2d (BNA) 1596, 1599 (Fed. Cir. 1988); *In re Nielson*, 2 U.S.P.Q.2d (BNA) 1525, 1528 (Fed. Cir. 1987); *In re Hedges*, 228 U.S.P.Q. (BNA) 685, 687 (Fed. Cir. 1986).

For at least the aforementioned reasons, Applicants respectfully submit that the Examiner has failed to make a *prima facie* case that the present invention is obvious over Ganesan, Fleming, Weidner, or Albrecht, either alone or in combination. Applicants request that the Examiner's rejections of claims 8-9, 15, 18-19, 27, and 32 under 35 U.S.C. 103(a) be withdrawn.

For the aforementioned reasons, it is respectfully submitted that all claims pending in the present application are in condition for allowance. The Examiner is invited to contact the undersigned at (713) 934-4052 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

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Mark W. Sincell

Mark W. Sincell, Ph.D.

Reg. No. 52,226

Williams Morgan & Amerson, P.C.

10333 Richmond Avenue, Suite 1100

Houston, TX 77042

(713) 934-7000

(713) 934-7011 (Fax)

AGENT FOR APPLICANTS